

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION**

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PAUL SCARCELLO, JR.,

Plaintiff,

v.

Case No. 20-11850

TENNECO INC. and TENNECO  
AUTOMOTIVE OPERATING  
COMPANY INC.,

Defendants.

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**ORDER DENYING WITHOUT PREJUDICE PLAINTIFF'S MOTION FOR JUDGMENT  
ON THE ADMINISTRATIVE RECORD AND DEFENDANTS' MOTION FOR  
JUDGMENT ON THE ADMINISTRATIVE RECORD**

Plaintiff and Defendant have filed cross-motions for judgment on the administrative record in regards to Plaintiff's ERISA § 502(a)(1)(B) benefits claim. (See ECF Nos. 25, 26.) During a September 12, 2022, telephonic status conference, the parties agreed to a stay of most<sup>1</sup> active litigation in this matter pending the outcome of a September 26, 2022 facilitation before Magistrate Judge Anthony P. Patti. The parties have also agreed to dismiss the pending motions for judgment on the administrative record without prejudice with the understanding that refreshed versions of the motions can be filed if facilitation proves unsuccessful. Further, the parties agreed that if the motions are refiled, they will rely on essentially the same facts as the current version of the motions.

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<sup>1</sup> The court will enter a separate stipulated order submitted by the parties detailing the terms of the stay.

During the status conference, the court also indicated that it would prefer that any refreshed version of the motions contain revised formatting for the statement of facts. Specifically, the moving party's statement of facts should consist of numbered paragraphs briefly describing each material fact underlying the motion. Each proffered fact must be supported by a citation to record evidence. The response brief should begin with a "counter-statement of material facts" if any of the moving party's proffered facts are contested. The paragraph numbering in the response must correspond to the first statement of facts.<sup>2</sup> Any proffered fact in the movant's statement of facts that is not specifically contested will, for the purpose of the motion, be deemed admitted.<sup>3</sup> " Such a statement is to be included as the first section of the motion, but the pages of that section do not count against the page limit for briefs.

Based on the parties' joint agreement to attempt facilitation,

IT IS ORDERED that Plaintiff Scarcello's "Motion for Judgment on the Administrative Record" (ECF No. 25) is DENIED WITHOUT PREJUDICE.

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<sup>2</sup> Examples of movant's separate factual statements:

1. Plaintiff Jones worked for ABC Corp. in an at-will position from 1999 until his termination in 2005. Jones dep., Appdx Ex. 4, pg. 10.

\* \* \*

25. ABC Corp. Human Resources Director Smith testified that the only reason Jones was terminated was repeated tardiness. Smith dep., Appdx. Ex. 15, pg. 5

<sup>3</sup> For examples of non-movant's corresponding factual statements:

1. Plaintiff admits that he worked for ABC Corp. in an at-will position, but the commencement of employment was in 1997. Jones dep., Appdx Ex. 4, pg. 22.

\* \* \*

25. Plaintiff admits that Human Resources Director Smith testified at page 5 that Jones was terminated for tardiness, however Smith also agreed that he said in an email to ABC Corp. Vice President Brown that Jones should "move out" since he was "getting along in years." Smith dep., Appdx. Ex. 15, pg. 39.

IT IS ORDERED that Defendants' "Motion for Judgment on the Administrative Record" (ECF No. 26) is DENIED WITHOUT PREJUDICE.

s/Robert H. Cleland /  
ROBERT H. CLELAND  
UNITED STATES DISTRICT JUDGE

Dated: July 26, 2022

I hereby certify that a copy of the foregoing document was mailed to counsel of record on this date, July 26, 2022, by electronic and/or ordinary mail.

s/Lisa Wagner /  
Case Manager and Deputy Clerk  
(810) 292-6522

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